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OFFICE OF PETITIONS

In re Application of :
Hyre et al. : DECISION ON PETITION
Application No. 10/005,682 :
Filed: 5 December, 2001 :
Atty Docket No. 5356-05 :

This is a decision on the renewed petition under 37 CFR 1.137(b),¹ filed on 11 December, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 10 December, 2005, for failure to file a proper reply to the Notice of Non-Compliant Appeal Brief (37 CFR 41.37) mailed on 9 August, 2005, which set a one (1) month shortened period for reply. On 1 September, 2005, petitioner filed a corrected Appeal Brief. The corrected Appeal Brief was determined to be improper, however, and a Notice was mailed on 28 October, 2005. On 21 November, 2005, a second corrected Appeal Brief was filed, along with a three (3) month extension of time. The corrected Appeal Brief was determined to be improper, however, and a Notice was mailed on 25 February, 2006. A corrected Appeal Brief was again filed on 17 March,

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

2006. Notice of Abandonment was mailed on 3 April, 2006. The petition filed on 11 August, 2006, was dismissed on 1 November, 2006, because a proper Appeal Brief had not been filed.

The examiner has determined that the Appeal Brief filed on 11 December, 2006, with the present petition is a proper appeal brief. As such, the petition may be favorably considered.

The application is being referred to Technology Center Art Unit 1731 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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